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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,474

12/28/2004

Mami Nonomura

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10/05/2009

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
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ALEXANDRIA, VA 22314

EXAMINER

WHITE, EVERETT NMN

ART UNIT

PAPER NUMBER

1623

NOTIFICATION DATE

DELIVERY MODE

10/05/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No. 10/519,474	Applicant(s) NONOMURA ET AL.	
	Examiner EVERETT WHITE	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-9 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1,3,6,9,12-15 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 26, 2009 has been entered.
2. The amendment filed August 26, 2009 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
 - (A) Claims 2, 4, 5, 10 and 11 have been canceled;
 - (B) New Claim 22 has been added;
 - (C) Claim 1 has been amended;
 - (D) Comments regarding Office Action have been provided drawn to:
 - (I) 112, 2nd paragraph, which has been withdrawn in view of the arguments presented in Applicants response filed July 23, 2009;
 - (I) 102(b) rejection, which has been withdrawn in view of the arguments presented in Applicants response filed July 23, 2009;
 - (II) 103(a) rejections, which have been maintained for the reasons of record.
3. Claims 1, 3, 6-9 and 12-21 are pending in the case.

Claim Rejections - 35 USC § 103

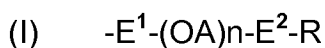
4. Claims 1, 3, 9, 12-14 and 18-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al (WO 00/73351 A1, already of record) in view of Golz-Berner et al (US Patent No. 6,245,342, already of record).

Applicants claim an allergen inactivating agent comprising a polysaccharide derivative as its effective component, wherein said polysaccharide derivative has a cellulose ether as its backbone, and some or all of hydrogen atoms in the hydroxy group of the polysaccharide derivative are substituted by a group represented by the following general formula (I):



wherein E^1 represents an alkylene containing 1 to 6 carbon atoms optionally substituted with hydroxy group or oxo group; n represents a number of 0 to 50; A independently represents an alkylene containing 1 to 6 carbon atoms, the number of A being n ; E^2 represents ether bond or oxycarbonyl group; R represents an alkyl group containing 4 to 30 carbon atoms optionally substituted with hydroxy group, a sulfoalkyl group containing 1 to 5 carbon atoms optionally substituted with hydroxy group, or a salt thereof, wherein the cellulose ether has an average molecular weight of 100,000 to 600,000. Applicants further claim a face mask comprising the allergen inactivating agent.

The Nagasawa et al WO publication discloses a polysaccharide derivative having a structure formed by replacing part or all of the hydrogen atoms of the hydroxyl groups in a polysaccharide or a derivative thereof with a group represented by the formula



wherein E^1 represents C_{1-6} divalent saturated hydrocarbon group optionally substituted by hydroxy or oxo; n is a number of 8 to 300; nA 's are the same or different and each represents a C_{1-6} divalent saturated hydrocarbon group; E^2 represents an ether bond or oxycarbonyl; and R represents C_{4-30} alkyl optionally substituted by hydroxyl (see Abstract). The specification of the Nagasawa et al publication discloses hydroxyethyl cellulose as an example of the polysaccharide derivative (see page 5 of the machine translated document), which embraces instant Claim 3. The presence of the polysaccharide derivative inherently treats allergen in the various toiletry cited in the Nagasawa et al publication since products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada* 15 USPQ 2d 1655, 1658 (Fed. Cir.1990). See MPEP 2112.01. See page 6, 2nd paragraph of the machine translated document of the Nagasawa et al publication wherein weight average molecular weight of the polysaccharides thereof ranges from 10,000 to 5 million, which covers the molecular weight range recited in instant Claims 1 and 13.

The instantly claimed allergen inactivating agent comprising a polysaccharide derivative selected as cellulose ether as its effective component of the instant claims differs from the polysaccharide derivative of the Nagasawa et al publication by claiming a cosmetic product comprising an allergen inactivating agent.

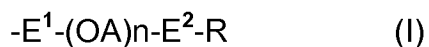
The Golz-Berner et al patent shows that the present of hydroxyethylcellulose, a cellulose ether, in a cosmetic product is known in the art. See column 3, lines 13-15 of the Golz-Berner et al patent wherein hydroxyethylcellulose is disclose as a convention additive or vehicle for use in substances such as cosmetics.

One of ordinary skill in this art would be motivated to combine the teaching of the Nagasawa et al publication with the teaching of the Golz-Berner et al patent since both references disclose hydroxyethyl cellulose as a component of cosmetic products.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the hydroxyethylcellulose of the Nagasawa et al publication with another hydroxyethyl cellulose in view of the recognition in the art, as evidenced by the Golz-Berner et al patent, that the hydroxyethylcellulose is a conventional additive or vehicle for use with cosmetic.

5. Claims 1, 3, 6, 9, 12-15 and 18-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al (WO 00/73351 A1, already of record) in view of Palinczar (US Patent No.4,671,955, already of record).

Applicants claim an allergen inactivating agent comprising a polysaccharide derivative as its effective component, wherein said polysaccharide derivative has a cellulose ether as its backbone, and some or all of hydrogen atoms in the hydroxy group of the polysaccharide derivative are substituted by a group represented by the following general formula (I):

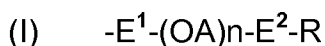


wherein E^1 represents an alkylene containing 1 to 6 carbon atoms optionally substituted with hydroxy group or oxo group; n represents a number of 0 to 50; A independently represents an alkylene containing 1 to 6 carbon atoms, the number of A being n; E^2 represents ether bond or oxycarbonyl group; R represents an alkyl group containing 4 to

Art Unit: 1623

30 carbon atoms optionally substituted with hydroxy group, a sulfoalkyl group containing 1 to 5 carbon atoms optionally substituted with hydroxy group, or a salt thereof, wherein the cellulose ether has an average molecular weight of 100,000 to 600,000. Applicants further claim that the allergen inactivating agent is an aerosol.

The Nagasawa et al WO publication discloses a polysaccharide derivative having a structure formed by replacing part or all of the hydrogen atoms of the hydroxyl groups in a polysaccharide or a derivative thereof with a group represented by the formula



wherein E^1 represents C_{1-6} divalent saturated hydrocarbon group optionally substituted by hydroxy or oxo; n is a number of 8 to 300; nA 's are the same or different and each represents a C_{1-6} divalent saturated hydrocarbon group; E^2 represents an ether bond or oxycarbonyl; and R represents C_{4-30} alkyl optionally substituted by hydroxyl (see Abstract). The specification of the Nagasawa et al publication discloses hydroxyethyl cellulose as an example of the polysaccharide derivative (see page 5 of the machine translated document), which embraces instant Claim 3. The present of the polysaccharide derivative inherently treats allergen in the various toiletry cited in the Nagasawa et al publication since products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada* 15 USPQ 2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01. See page 6, 2nd paragraph of the machine translated document of the Nagasawa et al publication wherein weight average molecular weight of the polysaccharides thereof ranges from 10,000 to 5 million, which covers the molecular weight range recited in instant Claims 1 and 13.

The instantly claimed allergen inactivating agent comprising a polysaccharide derivative selected as cellulose ether as its effective component of the instant claims differs from the polysaccharide derivative of the Nagasawa et al publication by claiming that the allergen inactivating agent is an aerosol.

The Palinczar patent shows that the present of a hydroxyethylcellulose, a cellulose ether, in an aerosol is known in the art. See column 3, lines 6-10 of the

Palinczar patent wherein hydroxyethylcellulose is disclosed as a component of a sunscreen composition in a form that may be selected as an aerosols which provide ultraviolet light protection to the skin.

One of ordinary skill in this art would be motivated to combine the teaching of the Nagasawa et al publication with the teaching of the Palinczar patent since both references discloses hydroxyethyl cellulose as a component of cosmetic products.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the hydroxyethylcellulose of the Nagasawa et al publication with another hydroxyethyl cellulose in view of the recognition in the art, as evidenced by the Palinczar patent, that the hydroxyethylcellulose increases the aesthetic water-proof property of sunscreen compositions.

Response to Arguments

6. Applicant's arguments filed August 26, 2009 have been fully considered but they are not persuasive. Applicants argue against the rejections on the ground that Nagasawa et al alone or in combination with Golz-Berner et al or Palinczar do not described selecting a cellulose ether as a backbone for polysaccharide derivatives, wherein the cellulose ether has an average molecular weight of 100,000 to 600,000. Applicants also argue that the cited references do not describe the claimed molecular weight of the cellulose ether in combination with "n" being from 10-20 and hydroxyethyl-cellulose having the claimed average molecular weight. The tables disclosed on page 9 and 10 of the Applicants remarks wherein comparison of specific compounds disclosed in the Examples of the instant application are made with examples of compounds disclosed in the prior art. These arguments are not persuasive since the Nagasawa et al publication discloses closely similar compounds that covers the molecular weight and n values of the compounds recited in the instant claims. For example, see page 4, lines 21-23 of the translated copy of Nagasawa et al WO publication wherein the molecular weight of the polysaccharides thereof, which include hydroxyethyl cellulose as instantly claimed, ranges from 10,000 to 10 million. See the English Language Abstract of Nagasawa et al WO publication which disclose the "n" value for the n symbol disclose in

formula (I) $-E^1-(OA)_n-E^2-R$ ranges from 8 to 300, which covers the "n" value for the same formula recited in the instant claims.

Applicants further argue that there is no motivation to combine the references to reject the claims. The Examiner stands by the motivation statements presented in the above rejections of the instant claims.

Accordingly, the rejection of the instant claims under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al (WO 00/73351 A1) in view of Golz-Berner et al (US Patent No. 6,245,342) and as being unpatentable over Nagasawa et al (WO 00/73351) in view of Palinczar (US Patent No. 4,671,955) is maintained for the reasons of record.

Allowable Subject Matter

7. Claims 7 and 8 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not disclose or fairly suggest a mask and a sheet comprising an allergen inactivating agent comprising a polysaccharide derivative wherein the polysaccharide derivative has a cellulose ether as its backbone and some or all of the hydrogen atoms in the hydroxyl group of the polysaccharide derivative are substituted by a group represented by formula (I), $-E^1-(OA)_n-E^2-R$, as described in instant Claim 1.

9. Claims 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Summary

10. Claims 7 and 8 are allowed; Claims 1, 3, 6, 9, 12-15, and 18-22 are rejected; Claims 16 and 17 are objected to.

Examiner's Telephone Number, Fax Number, and Other Information

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is 571-272-0660. The examiner can normally be reached on 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Everett White/
Examiner, Art Unit 1623

/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623